HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26307 of 2006

Date : 29-12-2006

Between :

Kondeti Krishna Murthy and others .. Petitioners

And

The Gram Panchayat, Vella
Ramachandrapuram Mandal,
East Godavari District
represented by its Panchayat Secretary. .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26307 of 2006

ORDER:

1. This Court ordered Notice before admission on 18-12-2006 and status quo was directed to be maintained for a period of three weeks.

2. Counter affidavit is filed by the respondent.

3. The Writ Petition is filed for a writ of mandamus declaring the notice dated 12-12-2006 issued by the respondent-Gram Panchayat directing the petitioners to vacate their thatched houses situate in Sy.No.257/1 of Vella village, Ramachandrapuram Mandal, East Godavari District as illegal, arbitrary, unjust and in violation of the order passed by this Court and to pass such other suitable orders.

4. Sri N.Siva Reddy, Counsel representing the writ petitioners would submit that in the impugned notice it had been specified as though this Court had directed the

respondent to see that further proceedings are taken up for vacation of the petitioners from their respective houses in question. The learned Counsel also pointed out to the order made in W.P.No.15531/2006.

5. Sri M.Prabhakar Rao, the learned standing Counsel representing the respondent would submit that the prior Writ Petition was disposed of directing the respondents therein to follow the due process of Law in the event of the petitioners being in possession of the subject matter of the Writ Petition. The learned standing Counsel also would submit that the procedure to vacate the houses as per Section 103 of A.P. Panchayat Raj Act 1994 had been followed and hence the action of the Gram Panchayat cannot be found fault.

6. It is stated that all the petitioners belong to weaker sections of the society and they are not owning any property and are living by doing agricultural coolie work. It is stated that in the year 1998 the Government issued house site pattas to them each of an extent of Ac.0-03 cents in Sy.No.257/1 of Vella village and they have no dwelling houses and have been living in unhygienic conditions. It is also stated that when the petitioners tried to erect thatched houses the respondent/Gram Panchayat filed W.P.No.19312/88 seeking to cancel the pattas granted to them and the said

Writ Petition was disposed of by an order dated 23-7-1996 giving liberty to the Gram Panchayat to approach the District Collector by filing an Appeal. It is stated that representations were made in this regard before the Joint collector and ultimately pattas were cancelled and as against the said order the petitioners filed Revision before the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad and the same is presently pending and posted for hearing on 29-12-2006. It is also stated that when the respondent/Gram Panchayat had been taking steps to evict the petitioners from patta land with a view to wreak vengeance against the petitioners they filed W.P.No.15331/2006 and initially this Court granted interim order of status quo and after filing counter affidavit, allowed the Writ Petition by directing the respondent/Gram Panchayat to follow the due process of law in the event of the petitioners being in possession of the subject matter of the Writ Petition by order dated 13-11-2006. The operative portion of the said order reads as hereunder :

> "In the light of the respective stands taken by the parties and also in view of the fact that the matter is said to be pending before the Chief Commissioner of Land Administration, A.P., Hyderabad, it would be appropriate to dispose of the Writ Petition directing the respondents to follow the due process of law in the event of the

petitioners being in possession of the subject matter of the Writ Petition.

Accordingly the Writ Petition is allowed to the extent indicated
above. No order as to costs."

It is also stated that after receipt of a copy of the order in the said Writ Petition the respondent-Gram Panchayat in stead of following the due process of law had chosen to issue notice of eviction asking the petitioners to vacate their thatched houses within seven days from the date of receipt of the notice. The said notice was received by the 16th petitioner on 13-12-2006 and similar notice copies had been issued to the other petitioners as well. The main grievance of the petitioners is that though the impugned order is termed as notice, it is only a final order giving seven days time to the petitioners to vacate their houses.

7. The respondent filed counter affidavit wherein in para-2 it is averred that the land in R.S.No.257/1 of Vella village is admittedly a Grama Kantham and the same was set apart for construction of Primary Health Center in the village for the benefit of all the villagers. The proposal for such construction is in active consideration by the Government. Further specific stand is taken that the writ petitioners filed W.P.No.15331/2006 alleging that

they are in possession of the property and the Gram Panchayat is forcibly trying to evict them and this Court on 25-7-2006 ordered status quo with regard to possession and the Gram Panchayat filed counter affidavit specifically stating that they were never in possession of the property and the land is ear-marked for construction of Primary Health Centre. Further specific stand is taken that by virtue of the exparte order the writ petitioners forcibly occupied the land during the pendency of the Writ Petition. The Writ Petition was disposed of with a direction to the Gram Panchayat to follow the due process of law for evicting the writ petitioners if they are in possession of the property. It is also averred that as petitioners have been in illegal occupation of public property, a notice under Section 103(2) of the A.P. Panchayat Raj Act, 1994, in short hereinafter referred to as “Act” for the purpose of convenience, was issued on 12-12-2006 calling upon them to vacate the premises within seven days from the date of receipt of the notice. Further specific stand is taken in para-3 of the counter affidavit that it is a fact that house site pattas were granted in favour of some petitioners in the year 1988 by the Mandal Revenue Officer without notifying the Grama Kantham as contemplated under Sections 80 and 104 of the Act. Therefore the said illegal house site pattas were cancelled

by the Joint collector after following the due procedure of law on 1-6-1988. Thus the petitioners were never in possession of the property. Further specific stand is taken that the Gram Panchayat is not aware of the pendency of any matter in relation to the subject matter. Further specific stand is taken that it is false to say that the petitioners are house less poor and they are having their own houses in the village and with a view to grab the public property the petitioners resorted to forcible occupation under the guise of the orders of this Court. It is also stated that the land occupied by the writ petitioners was ear-marked for Primary Health Centre and all the villagers have donated an amount of Rs.1,00,000/- for construction of the Primary Health Centre and proposals are in active consideration before the Government and as the land in question is meant for public purpose, the petitioners have no manner of right whatsoever over the land and they are liable to be evicted forthwith.

8. Section 103 of the Act deals with **Recovery of penalty and compensation for unauthorized occupation of land** and sub-section (2) of Section 103 specifies that the executive authority may, by notice require any person on whom a penalty is or may be imposed under sub-section (1) to vacate such land and to

remove any building or other construction or anything deposited on it.

9. While disposing of the prior Writ Petition already referred to supra, this Court specified that it would be appropriate to dispose of the Writ Petition directing the respondents to follow the due process of law in the event of the petitioners being in possession of the subject matter of the Writ Petition. The respondent had taken a specific stand that taking advantage of the interim order made by this Court, certain structures had been raised. This Court is not inclined to express any further opinion relating to this aspect. It is not the case of the writ petitioners that in the Revision said to have been filed as against the order of cancellation of pattas by the Joint collector any interim order as such had been made. The Gram Panchayat is taking a specific stand that they are not aware of any such proceeding whatsoever. It is needless to say that in the event of any such proceeding pending before the Chief Commissioner of Land Administration, the same to be disposed of at an early date. However, in the light of the fact that house site pattas had been cancelled in the year 1988 the impugned notices issued under Section 103(2) of the Act as such cannot be found fault in any way. It is needless to say that any further action which may be taken by the respondent/Gram Panchayat in this regard

will be subject to the further orders which may be passed by the Chief Commissioner of Land Administration. Except making these observations, nothing else can be done at this stage.

10. Accordingly, with the above observations, the Writ Petition is hereby dismissed. No costs.

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Justice P.S.Narayana

Date : 29-12-2006

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